

Remarks

In the March 9, 2006 Office Action, Examiner rejected claims 1-19 as being obvious in view of U.S. Patent Application Publication 2004/0260666 (Pestotnik).

To the extent Examiner contends that the limitations of Applicant's claims are inherent in Pestotnik, Examiner fails to establish such inherency. To establish inherency, Examiner "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *In re Robertson*, 169 F.3d (Fed. Cir. 1999). Examiner first admits that Pestotnik "does not specifically teach analysis of patient medical data to determine an estimated glomerular filtration rate" (Office Action , pg. 4). Examiner then "interprets" Pestotnik "to be inclusive of analysis of kidney function and/or an associated filtration rate" *Id.* Examiner's mere interpretation of a reference does not make clear that the missing descriptive matter is necessarily present.

Pestotnik is unable to calculate a patient's estimated glomerular filtration rate based on the patient's medical record. Pestotnik's "inference module 232 controls the manner by which decision-support module 210 generates solutions to the known or unknown medical conditions of the patient." [0090]. The "[i]nference module 232 . . . includes one or more inference engines 233" [0090]. "The one or more inference engines 233 apply the rules and parameters stored in knowledge module 226 to generate the medical diagnosis and the medical care recommendation for the patient." [0090]. The rules and parameters of Pestotnik are a series of if-then statements, (e.g., Table 6, Figures 13A-13F). Pestotnik applies its if-then rules to the patient data, "i.e., recent laboratory test result, vital statistics, current drug usage, and the like," [0078], to generate a recommendation. If Pestotnik does not have enough information to make a recommendation, Pestotnik will seek additional information:

Upon receiving the answers, inference module 232 and/or knowledge module 226 (with associated rules) evaluate the responses, . . . , to determine whether additional information is need [sic] to generate a recommendation. Until a

✱✱ recommendation is reached, system 200 will continue to ask questions, receive answers and evaluate answers

[0124].

In contrast, Applicant's "GUI 234 . . . extracts patient information 236" and estimates the patient's glomerular filtration rate using Equations 1 and 2, (Pg. 22, lines 9-24), thus deriving additional information from the "patient information 236."

✱✱ Pestotnik is unable to output at least one medical treatment recommendation wherein the recommendation is based on the patient's medical record and estimated glomerular filtration rate. As Examiner admits, Pestotnik "does not specifically teach analysis of patient medical data to determine an estimated glomerular filtration rate" (Office Action , pg. 4). Furthermore, Pestotnik does not use information it derives when applying its if-then rules to generate a recommendation: "inference module 232 generates the decision-supported patient data based upon the newly-gathered patient data, stored patient data within patient module 220, and the knowledge base contained within the knowledge module 226," [0090].

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To the extent Examiner contends Applicant's invention is obvious in view of Pestotnik, Examiner fails to establish a *prima facie* case. For at least the reasons stated above, Pestotnik does not teach or suggest all the claimed limitations. Moreover, Pestotnik teaches away from Applicant's claimed invention because, as explained above, Pestotnik is unable to derive information from patient data and is further unable to generate a decision based upon information it derives.

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For at least the reasons stated above, claims 1, 10, and 19 are patentable in view of Pestotnik.

Claims 2-9 and 11-18 depend from claims 1 and 10 respectively. For at least the reasons claims 1 and 10 are patentable, claims 2-9 and 11-18 are patentable. Claims 2-9 and 11-18 provide additional limitations beyond claims 1 and 10 respectively providing further reason that claims 2-9 and 11-18 are patentable.

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Applicant's Attorney submits that the claims are in a condition for allowance. Applicant's Attorney respectfully requests a notice to that effect. Applicant's Attorney also invites a telephone conference if the Examiner believes that it will advance the prosecution of this application.

Please charge any additional fees or credit any overpayment as a result of the filing of this paper to our Deposit Account No. 02-3978. A duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

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